

REMARKS

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the following above amendments and the following remarks. Currently, Claims 1-59 are pending. With this Amendment, Claims 36, 52 and 59 have been amended and Claim 58 has been canceled.

Amendment to the Claims

Claims 1-59 have been rejected, with Claims 49-51 and 59 being indicated as allowable. Claims 36, 52 and 59 have been amended and Claim 58 has been canceled. Applicants respectfully believe these amendments overcome the Examiner's claim rejections.

Applicants have amended Claim 59 to rewrite it in independent form. Claim 36 and Claim 52 have been amended to recite the mechanical fastening element and the attachment surface being in the unfastened condition. These amendments are supported in the Specification as originally filed. Claim 58 has been canceled.

No new matter has been added by this Amendment. No additional fee is due for this Amendment because the number of independent claims remains unchanged.

Claim Rejections - 35 U.S.C. §102

The rejection of Claims 1-4, 8-21, 29-43, 46-48 and 52-58 under 35 U.S.C. §102 as being anticipated by Elsberg (U.S. Patent No. 6,287,287) is respectfully traversed. Applicants note that on page 2 of the Office Action, the Examiner identified §102(a) in paragraph 1, but §102(b) in paragraph 2. Applicants assume the rejection is under §102(a).

Elsberg discloses a prefastened disposable absorbent article including a pair of passive side bonds that help to maintain the absorbent article in a prefastened condition. (Col. 2, lines 40-46).

For a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. Elsberg does not disclose each and every element or limitation of Applicants' claims, as amended.

With respect to Claim 1, the Examiner states on page 2 of the Office Action that the fastening component and the mating fastening component disclosed in Elsberg are in the unfastened condition and cites Col. 2, lines 27-46. Applicants respectfully disagree that this passage from Elsberg, or any other section thereof, discloses that the fastening component and the mating fastening component are in the unfastened condition.

Col. 2, lines 27-46 of Elsberg provide:

In response to the difficulties and problems discussed above, a new prefastened disposable absorbent article which has passive side bonds and an adjustable fastening system has been discovered. In one aspect, the present invention concerns a prefastened disposable absorbent article which defines an absorbent, a front waist region, a back waist region, a crotch region which extends between and connects the waist regions and a pair of opposed side edges. The prefastened absorbent article includes a pair of primary fasteners which are located on the opposed side edges in one of the waist regions. The primary fasteners overlap and releasably engage the opposite waist region of the absorbent article to provide the prefastened absorbent article. The article further includes a pair of passive side bonds which are located inward of the primary fasteners. *The passive side bonds releasably connect an overlapped portion of the one waist region to the opposite waist region to assist in maintaining the prefastened absorbent article in a prefastened condition.* (Emphasis added). (Col. 2, lines 27-46).

Therefore, Col. 2, lines 27-46 of Elsberg does not disclose that the fastening component and the mating fastening component are in the unfastened condition. Rather, the article is in a prefastened condition. Similarly, the remainder of Elsberg does not disclose that the fastening component and the mating fastening component are in the unfastened condition when the passive side bonds are in place.

The fastening system of Elsberg includes a pair of primary fasteners 62, a pair of secondary fasteners 64, a pair of passive side bonds 80 and 82 and an attachment panel 66. (Col. 5, lines 14-18; Col. 10, line 63 to Col. 17, line 61).

Elsberg discloses that “prefastened” means that the fasteners are releasably engaged. “In the different aspect of the present invention, the primary fasteners 62 are releasably engaged with the outer surface of the opposite waist region 22 and 24 of the diaper 20 before the diaper 20 is placed on the wearer to provide a prefastened diaper.” (Col. 11, lines 45-49; Emphasis added).

As previously stated, the passive side bonds of Elsberg assist in maintaining the absorbent article in a prefastened condition. Elsberg states:

The prefastened absorbent article of the different aspects of the present invention further includes a pair of passive side bonds for improved reliability of *maintaining the article in a prefastened condition* particularly when it is being pulled on over the hips of the wearer. ... In such a configuration, the passive side bonds 80 and 82 assist the fastening system 60 in *maintaining the diaper in a prefastened condition* as the diaper 20 is pulled up or down over the hips of the wearer. (Col. 15, lines 6-25; Emphasis added).

Since the passive side bonds of Elsberg assist the fastening system in maintaining the absorbent article in a prefastened condition, the fasteners are engaged or fastened. Therefore, the fastening component and the mating fastening component are not in the unfastened condition and this rejection should be withdrawn.

With respect to Claim 15, on page 4 of the Office Action, the Examiner states that the limitation regarding the fastening component and the mating fastening component being engageable only upon breaking the frangible bond is directed to an intended use of the article and that intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. The Examiner further states that the invention of Elsberg meets the structural limitations of the claim. Applicants respectfully disagree that Elsberg meets the structural limitations of Claim 15. The Examiner states that the fastening component and the mating fastening component disclosed in Elsberg are in the unfastened condition and cites Col. 2, lines 27-46. This is the exact same passage cited by the Examiner for the same structural limitation recited in Claim 1. For all of the same reasons stated above in the discussion of Claim 1, Applicants respectfully disagree that

Elsberg discloses that the fastening component and the mating fastening component are in the unfastened condition. The Examiner also cited Figure 4 of Elsberg for support of the limitation of the fastening component and the mating fastening component being in the unfastened condition. Again, Applicants respectfully disagree. Figure 4 of Elsberg shows “a plan view of the disposable absorbent article of FIG. 1 in an unfastened, stretched and laid flat condition.” (Col. 4, lines 18-20). Figure 4 simply shows where the location of the passive side bonds 80 and 82 will be in the prefastened article.

In Elsberg, the fastening component and the mating fastening component are not in the unfastened condition when the passive side bonds are in place. Therefore, this rejection should be withdrawn with respect to Claims 15-18.

With respect to Claim 19, on page 5 of the Office Action, the Examiner states that Elsberg discloses that the fastening component and mating fastening component are in the unfastened condition and cites Col. 17, line 65 to Col. 18, line 9.

Col. 17, line 65 to Col. 18, line 14 of Elsberg provide:

The fastening system is *prefastened* to releasably engage the front and back waist portions to allow the absorbent article to be pulled up or down over the hips of the wearer such as conventional training pants. Moreover, the fastening system can be used to releasably engage and adjust the front and back waist portions of the absorbent article to maintain the absorbent article about the waist of the wearer after the article has been pulled on in a similar manner to conventional diapers. The passive side bonds assist the fastening system *in maintaining the article in a prefastened condition* as the article is pulled up or down over the hips of the wearer. Moreover, the passive side bonds prevent movement and shifting of the waist portions relative to each other for improved fit and performance. The passive side bonds also prevent the rollover or folding on the side and waist edges of the prefastened absorbent article as it is pulled over the wearer’s hips. (Emphasis added). (Col. 17, line 65 to Col. 18, line 14).

Therefore, Col. 17, line 65 to Col. 18, line 9 of Elsberg does not disclose that the fastening component and the mating fastening component are in the unfastened condition. In addition, as previously discussed, the remainder of Elsberg does not

disclose that the fastening component and the mating fastening component are in the unfastened condition. Therefore, this rejection should be withdrawn.

With respect to Claim 36, Claim 36 has been amended to recite that the mechanical fastening element and the attachment surface being in the unfastened condition. As stated previously, Elsberg does not disclose that the fasteners are in the unfastened condition when the passive side bonds are in place. Therefore, this rejection should be withdrawn.

With respect to Claim 52, Claim 52 has also been amended to recite that the mechanical fastening element and the attachment surface being in the unfastened condition. Again, as stated previously, Elsberg does not disclose that the fasteners are in the unfastened condition when the passive side bonds are in place. Therefore, this rejection should be withdrawn.

Claim 58 has been canceled.

For at least the reasons presented above, Applicants respectfully submit that Claims 1-4, 8-21, 29-43, 46-48 and 52-58 are not anticipated by Elsberg. Thus, Applicants respectfully request withdrawal of this rejection.

Claim Rejections - 35 U.S.C. §103

The rejection of Claims 5-7, 22-28, 44 and 45 under 35 U.S.C. §103(a) as being unpatentable over Elsberg (U.S. Patent No. 6,287,287) is respectfully traversed.

Claims 5-7, 22-28, 44 (as amended) and 45 (as amended) depend from Claims 1, 19 and 41. On pages 11-12 of the Office Action, the Examiner states that Elsberg discloses the invention substantially as claimed, but is silent on the width of the frangible bonds and silent on the distance between the fastening components and the distal edges.

Applicants respectfully disagree that Elsberg discloses the invention substantially as claimed.

One of the factors in establishing a prima facie case of obviousness is that the prior art references, when combined, must teach or suggest all the claim limitations.

As discussed above with respect to Claims 1, 19 and 41, Elsberg does not disclose all of the limitations of Claims 1, 19 or 41.

For at least the reasons presented above, Applicants respectfully submit that Claims 5-7, 22-28 44 and 45 are not rendered obvious by Elsberg. Thus, Applicants respectfully request withdrawal of this rejection.

Allowable Subject Matter

On page 12 of the Office Action, the Examiner indicated that Claims 49-51 and 59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 59 has been rewritten in independent form. Claim 49 depends from Claim 36, as amended herein. Applicants submit that Claim 49 is still allowable. Claims 50-51 depend from Claim 49. Therefore, these claims should be allowed.

Prior Art

Applicants respectfully request that one prior art reference, which was previously submitted to the Examiner, be made of record.

On 22 May 2003 (received 27 May 2003), Applicants filed a Third Information Disclosure Statement which included, among other references, U.S. 4,317,449.

In the Office Action, the Examiner included a copy of the Form PTO-1449 filed with the Third Information Disclosure Statement (copy attached) in which this citation was not initialed, instead of being made of record. No reason for this action was provided in the Office Action or its attachments. Applicants believe that this reference was properly cited. Applicants request that this reference be made of record.

Conclusion

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

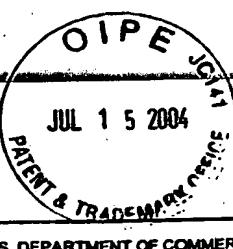
Respectfully submitted,



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Attachment

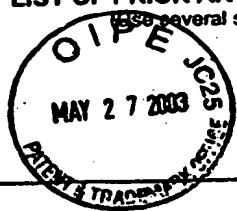
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Sheet 1 of 1

FORM PTO-1449 (MODIFIED)		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	ATTY. DOCKET NO. KCC-16,588	SERIAL NO. 10/023,457
LIST OF PRIOR ART CITED BY APPLICANT <small>(use several sheets if necessary)</small>		APPLICANT(S) Laurie COUTURE-DORSCHNER et al.		
		FILING DATE 17 December 2001	GROUP	



U.S. PATENT DOCUMENTS

*EXAMINER INITIAL	DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
AA	4,317,449	03/1982	Nowakoski			
AB						
AC						
AD						
AE						
AF						
AG						
AH						
AI						
AJ						
AK						

MAILED

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GROUP 31

FOREIGN PATENT DOCUMENTS

	DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION
						YES
						NO
AL	GB 2 267 024 A	11/1993	Great Britain			
AM	WO 95/29857	11/1995	PCT			
AN	WO 99/65441	12/1999	PCT			
AO						
AP						

OTHER PRIOR ART (Including Author, Title, Date, Pertinent Pages, Etc.)

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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

USCOMM-DC 80-3985